

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5441 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KANTABEN CHAMPAKLAL DESAI THROUGH P.O.A. HOLDER

Appearance:

MR. D.N. PATEL, AGP, for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/11/1999

ORAL JUDGEMENT

In response to notice of this petition Shri M.S. Shah appears for the respondent and states that he will argue the petition without filing counter affidavit. Shri D.N. Patel and Shri M.S. Shah have therefore been heard.

Brief facts giving rise to this petition are as under:

The competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 declared 5297 sq. mtrs. of land as surplus land on 29.5.1985 from the holding of the respondent. Feeling aggrieved the respondent of this petition filed an appeal under Section 33 of the Act which was dismissed on 1.8.1985.

Feeling again aggrieved against this order the matter was taken in review before the State Government. The State Government remanded the matter to the competent authority for recalculation of surplus land. In compliance of this order the competent authority on 30.4.1990 vide annexure-A declared 167.97 sq. mtrs. of land as surplus land with the respondent. Feeling aggrieved against this order of the competent authority, review appeal under Section 23 of the Act was filed by the respondent of this writ petition. The Urban Land Tribunal allowed the appeal of the appellant mentioning in the body of the order that it was an appeal under Section 33 of the Urban Land (Ceiling and Regulations) Act, 1976. The order of the competent authority contained in Annexure-A dated 30.4.1990 was quashed and the matter was remanded to the competent authority for fresh decision after affording sufficient opportunity of hearing to the appellant. It is this order which is under challenge in this writ petition.

Shri M.S. Shah has referred to two Government resolutions No. ULC 2077/C dated 29.6.1977 and 2082/5131/V1 dated 4.1.1985 and contended that no useful purpose will be served by remanding the matter to the competent authority. According to him if the declaration of excess land comes to the extent of 10 per cent it need not be taken in possession by the Government. The preamble of this resolution shows that the implementation of the Urban Land Ceiling Act is likely to create problem of very small piece of excess vacant land vesting in the Government. Such small piece of excess vacant land should not be of any use to the Government. Taking away such small piece of vacant land may, in some cases, cause undue hardship to the excess holders also. Keeping in view this object this resolution was passed and it was decided by the Government that it is necessary and expedient in the public interest to grant suo motu exemption under Section 20(1)(a) of the Urban Land Ceiling Act from the operation of Chapter III thereof in respect of persons holding marginal excess lands to the extent of 10 per cent of ceiling limit prescribed for each urban agglomeration. A subsequent resolution is also to the same effect except that the word "ceiling

limit" has been omitted. The question therefore is whether the 10 per cent is to be taken as 10 per cent of retainable land or Ceiling area. If it is taken to be 10 per cent of the retainable land, then the retainable land comes to 6630 sq. mtrs. and 10 per cent of this area will obviously be much excess to 167.97 sq. mtrs. If however the ceiling limit is to be taken into account, the ceiling limit will be 1500 sq. mtrs. and 10 per cent of this ceiling limit will come to 150 sq. mtrs. In that view also there will be marginal surplus of 17.97 sq. mtr. with the land holder. Consequently keeping in view the letter and spirit of two resolutions the surplus land with the respondent to the extent of 167.97 sq. mtrs is not liable to be taken in possession because it will be of no use to the Government. If this is so then the order of the Tribunal quashing the order of the competent authority dated 30.4.1990 will be meaningless and even if the matter is reconsidered on remand the position would not change in view of insignificant surplus as the land holder will be entitled to retain the same.

In view of the above discussion, the order of the Urban Land Tribunal cannot be sustained. It has therefore to be quashed. The writ petition therefore succeeds and is allowed. The impugned order annexure-C is quashed. However as a consequence to this no further action need be taken against the respondent who is entitled to hold surplus land measuring 167.97 sq. mtrs. under the two resolutions. There shall be no order as to costs.

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